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File No. IGR/7375/2018-RR6

രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറലുടെ കാര്യാലയം
തിരുവനന്തപുരം, തീയതി : 05/11/2018
ഫോൺ : 0471-2472110, 2472118
e-mail : regig@kerala.gov.in

രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറൽ
തിരുവനന്തപുരം

സബ് രജിസ്ട്രാർ
ഇരവിപുരം (ജില്ലാ രജിസ്ട്രാർ(ജനറൽ) , കൊല്ലം മുഖേന

സർ,

വിഷയം : രജിസ്ട്രേഷൻ വകുപ്പ് : ആർ.ആർ. സെക്ഷൻ - ബഹു. ഹൈക്കോടതിയുടെ
WP(C) No. 34956/17 നമ്പർ കേസിലെ വിധി ന്യായത്തിന്മേൽ സ്പഷ്ടീകരണം
നൽകുന്നത് - സംബന്ധിച്ച്.

പരാമർശം : കൊല്ലം ജില്ലാ രജിസ്ട്രാറുടെ 06.10.2018 തീയതിയിലെ എം.3-4132/18 നമ്പർ
കത്ത്.

സൂചനയിലേക്ക് ശ്രദ്ധ ക്ഷണിക്കുന്നു. ആഫീസ് നടപടികളുടെ ഭാഗമായി
രജിസ്ട്രാർ/ഫയൽ ചെയ്തിട്ടുള്ള രേഖകൾ നീക്കം ചെയ്യുന്നതിന് രജിസ്ട്രേഷൻ നിയമത്തിൽ
വ്യവസ്ഥകളില്ലാത്തതിനാൽ കോടതി വിധി നടപ്പിലാക്കത്തക്കവിധത്തിൽ, 1958 ലെ കേരള
രജിസ്ട്രേഷൻ ചട്ടങ്ങൾ 138, 241 എന്നിവയിലെ വ്യവസ്ഥാനുസരണമുള്ള നടപടികൾ
പാലിക്കുവാനും കമ്പ്യൂട്ടറിലെ പതിവുകളിൽ ആവശ്യമായ റിമാർക്കുകൾ ചേർക്കുവാനും
കോടതി വിധിയിലെ പരാമർശപ്രകാരം മറ്റ് നിയമവ്യവസ്ഥകൾ പാലിച്ച്
കാലാവധിക്കുള്ളിൽ ആധാരം രജിസ്ട്രാർ ചെയ്യുന്നതിനും ഇരിപ്പുരം സബ് രജിസ്ട്രാർക്ക്
നിർദ്ദേശം നൽകുന്നു.

വിശ്വസ്തയോടെ

രജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറലിനു വേണ്ടി

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

FRIDAY, THE 10TH DAY OF JANUARY 2014/20TH POUSHA, 1935

WP(C).No. 28728 of 2013 (M)

PETITIONER(S):

S. MADHAN, AGED 41 YEARS
S/O.R.SANKARAN, S.M.V. GARDENS,
MAIN ROAD, KOLLAM-691 001.

BY ADVS.SRI.A.V.THOMAS (SR.)
SMT.M.M.JASMIN
SRI.NIDHI SAM JOHNS

RESPONDENT(S):

1. THE SUB REGISTRAR
KOLLAM-691 001.
2. THE VILLAGE OFFICER
KOLLAM WEST, KOLLAM-691 001.
3. THE RECOVERY OFFICER
DEBTS RECOVERY TRIBUNAL, 5TH FLOOR
KHSB OFFICE COMPLEX,
PANAMPILLY NAGAR, ERNAKULAM.
KOCHI 682 036.
4. STATE BANK OF TRAVACORE
KOLLAM MAIN BRANCH, KOLLAM-691 001
REPRESENTED BY ITS CHIEF MANAGER.
5. T.SANTHAMMA, W/O.N.CHANDRASEKHARAN,
VASANTH VIHAR, LAKSHMI NADA
KOLLAM- 691 103.
6. PRASANTH, S/O.MURALI,
"MANI MANDIRAM", PUNUKKANNOOR
PERUMPUZHA P.O., KOLLAM-691 504.
7. PRAVEENKUMAR, S/O.SHANMUKHAN,
SHANMUKHA VILASOM, THILLERI CHERRY
KOLLAM-691 001.
8. ABDUL RAZZAK, MANAGING PARTNER,
M/S.A.K.TRADING CO., KOLLAM
CHAMAKKADA, KOLLAM-691 001.

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9. SHAJAHAN, PARTNER,
M/S.A.K.TRADING CO., CHAMAKKADA,
KOLLAM, KOLLAM-691 001.
10. GOPAKUMAR, S/O.G.NARAYANA PAI,
ASHOKA NIVAS, CUTCHERY WARD
KOLLAM-691 013.
11. S.M.VENKITANARAYANAN
S.M.V. GARDENS, MAIN ROAD,
KOLLAM-691 001.
12. HARIKUMAR
JANARDHANA MANDIRAM,
MUNDAKKAL, THEKKEVILA P.O.
KOLLAM-691 016.

R10 BY ADV. SRI.N.NAGARESH
R10 BY ADV. SRI.SHAJI THOMAS
R10 BY ADV. SRI.BINU PAUL
R10 BY ADV. SRI.T.V.VINU
R3 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
BY GOVERNMENT PLEADER SRI. RAFEEK V.K.
BY SRI.R.S.KALKURA, SC, SBT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 RUE COPY OF THE FINAL ORDER DATED 12/8/2004 IN OS NO.437/2002 PASSED BY THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM.
- EXHIBIT P2 TRUE COPY OF THE SALE NOTICE DATED 22/6/2009 PUBLISHED INMALAYALA MANORAMA DAILY DATED 25/6/2009.
- EXHIBIT P3 TRUE COPY OF THE ORDER OF CONFIRMANTION OF SALE DATED 17/8/209 UISSUED BY THE RECOVERY OFFICER, DRT, ERNAKULAM TO THE PETITIONER
- EXHIBIT P4 TRUE COPY OF THE SALE CERTIFICATE NO.2415/2009 OF KOLLAM SUB REGISTRY OFFICE, DATED 15/09/2009.
- EXHIBIT P5 TRUE COPY OF THE ORDER OF DELIVERY DATED 13/10/2009 ISSUED BY THE RECOVERY OFFICER, DRT, ERNAKULAM.
- EXHIBIT P6 TRUE COPY OF THE LAND TAX RECEIPT NO.281879 DATED 5/9/2013 FROM THE VILLAGE OFFICE, KOLLAM WEST.
- EXHIBIT P7 TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.4749/2013 DATED 15/6/2013 ISSUED BY THE SUB REGISTRY OFFICE, KOLLAM.
- EXHIBIT P8 TRUE COPY OF JUDGMENT DATED 10/6/2011 IN WPC NO.2684/2011 (HDFC VS. SUB REGISTRY OFFICER), HIGH COURT OF KERALA REPORTED IN 2011 (3) KLJ 561.
- EXHIBIT P9 TRUE COPY OF JUDGMENT DATED 3/6/2013 IN WPC NO.3734/2013R.JANARDHANAN VS. AUTHORISED OFFICER, UNION BANK OF INDIA AND OTHERS OF THE HIGH COURT OF KERALA
- EXHIBIT P10 TRUE COPY OF JUDGMENT DATED 12/7/2013 IN EFA NO.28/2001 OF HIGH COURT OF KERALA REPRTED IN 2013 (4) KLT 443 (RAJALEKSHMI AMMA VS. BASHEER).

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.,

“C.R.”

V. CHITAMBARESH, J

WP(C) NO. 28728 OF 2013

Dated this the 10th day of January, 2014

JUDGMENT

Can the attachments effected subsequent to the creation of equitable mortgage be effaced after the property is purchased by another in sale conducted by the Recovery Officer of the Debts Recovery Tribunal?

2. The fifth respondent had mortgaged his property (3.44 ares in R.S. No. 38/2 and 0.9443 are in R.S. No. 393/3) situated in Kollam west village to the fourth respondent bank ('the bank' for short) as security for the loan availed. The bank filed O.A. No. 437/2002 in the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('the Act' for short) for recovery of dues. The Debts Recovery Tribunal passed Ext.P1 final order allowing the bank to recover a sum of Rs.22,18,958.28 with interest thereon till realisation by sale of the property. A recovery certificate was

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accordingly issued to the Recovery Officer who proceeded to recover the debt in accordance with the provisions of the second schedule to the Income Tax Act, 1961. The provisions of the second schedule to the Income Tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 have been made applicable by virtue of Section 29 of the Act.

3. The Recovery Officer proclaimed the mortgaged property for sale under Rule 52 of the second schedule to the Income Tax Act, 1961 on failure of the certificate debtors to pay the amount even after receipt of demand notice. Ext.P2 sale notice published in the 'Malayala Manorama' Daily fixed the date of sale as 16.07.2009 wherein the petitioner was the highest bidder for a sum of Rs.27,30,000/-. No application was filed by anyone to set aside the sale and the same was accordingly confirmed by Ext.P3 order under Rule 63(1) of the Income-tax (Certificate Proceedings) Rules, 1962. Ext.P4 sale certificate issued to the petitioner was registered as document No. 2415/2009, Sub Registry Office, Kollam on the basis of which Ext.P5 order of delivery was issued by the Recovery Officer.

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Mutation was effected in favour of the petitioner and land tax was also paid for the property evidenced by Ext.P6 receipt which however contained an endorsement by the village officer as to the existence of certain attachments from court.

4. ExtP7 encumbrance certificate obtained by the petitioner reflected that several attachments were made at the instance of respondents 6 to 11 subsequent to the creation of equitable mortgage in favour of the bank on 25.03.2000. The first of such attachments was on 21.10.2000 and the others were on 04.11.2000, 03.11.2001, 15.03.2003 and 22.06.2004 in addition to an attachment made in O.S. No. 193/2001. The Writ Petition has been filed for a declaration that the sale of the property under the Act is free of all encumbrances and that attachments aforesaid does not affect the title of the petitioner. A writ of mandamus is also sought for a direction to the first respondent Sub Registrar and the second respondent Village Officer to remove the entries relating to the encumbrances over the subject property subsequent to the mortgage. Neither the fifth respondent nor respondents 6 to 12 filed any counter

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affidavit to the writ petition traversing the allegations even though notice was served on them by special messenger.

5. I heard Mr. A.V. Thomas, Senior Advocate on behalf of the petitioner as well as Mr. R.S. Kalkura, Advocate on behalf of the bank in extenso. I also heard Mr. Rafeek V.K., Government Pleader on behalf of the Sub Registrar and Village Officer as well as Mr. P. Parameswaran Nair, Assistant Solicitor General on behalf of the Recovery Officer of the Debts Recovery Tribunal.

6. A brief look at the relevant statutory provisions and the various judicial decisions would throw an insight to the points canvassed by the petitioner and the reliefs sought for in the writ petition. Section 64 of the Code of Civil Procedure, 1908 ('the CPC' for short) reads as under:

“64. Private alienation of property after attachment to be void.- (1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to the such attachment, shall be void as against all claims enforceable under the attachment.

[(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in

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pursuance of any contract for such transfer or delivery entered into and registered before the attachment.]

Explanation- For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.(emphasis supplied).

Similarly Order XXXVIII Rule 10 CPC reads thus:

“10. Attachment before judgment not to affect rights or strangers, nor bar decree-holder from applying for sale-
Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.”(emphasis supplied)

7. It was observed in **Housing Development Finance Corporation Vs. Sub Registry Officer [2011 (3) KLJ 561]**

arising under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as follows:

“This court finds that the rights and liberties conferred on the creditor/bank by virtue of mortgage created in the year 2001 and the right to proceed under the relevant provisions of the SARFAESI Act cannot be defeated because of the subsequent attachments ordered by the civil courts in 2007-2009. As such, the sale conducted on 24.11.2010, leading to issuance of Ext.P4 sale certificate, is complete in all respects and the title stands conveyed to the second petitioner”.

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A division bench of this court after adverting to the provisions of the Kerala Revenue Recovery Act, 1968 and the CPC observed in **Rajalekshmi Amma Vs. Basheer [2013 (4) KLT 443]** as follows:

“When a mortgage is created in terms of the provisions of the T.P. Act, it amounts to an encumbrance. An order of attachment before judgment creates no charge. x x x x x x x x x x
x x x x x xx x x x x x x x x x x x x x x x x x xxx
The quality of the mortgage as an encumbrance does not get watered down to be subservient to by an order of attachment by the civil court under Code of Civil Procedure. That order of attachment does not override or deserves to be preferred over the rights of a mortgagee or the effect of the mortgage as an encumbrance”.

8. I shall quote from a few other decisions also to give completeness to the judgment taking note of the elaborate arguments of the petitioner and the absence of any case law on the point under the Act.

(i) **Thiru Venkita Reddiar Vs. Noordeen [1977 KLT 877]:**

“The consequence is on the happening of a judicial sale all previous attachment effected upon the property sold fall to the ground”.

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**(ii) Leelavathy Bai Vs. Gangadharan [1987 (2) KLT
SN Case No. 38]:**

“Attachment will not confer any title in favour of the person who attaches. Injunction granted or attachment ordered or effected in relation to immovable properties will not make the suit one in which any right to immovable property is directly and specifically in issue so as to attract the bar of lis pendens provided in Section 52 of the Transfer of Property Act”.

**(iii) Kolappa Pillai Vs. Sukumaran Nair [1987 (2)
KLT SN Case No. 54]:**

“Section 64 hits only a private transfer or delivery of the property attached or of any interest therein. The passing of a decree by a court of law declaring a charge on such property or the court sale and delivery of the property in execution of such a decree can in no sense be said to be a private transfer or delivery of the property or of any interest therein”.

**(iv) Francis Vs. Navodaya Kuries and Loans Pvt. Ltd.
[2010 (3) KLT 609]:**

“Hence the attachment before judgment though made prior on point of time in O.S. No. 94/1989 ceased to have effect with the court sale in favour of respondent No. 1 (in O.S. No. 1156 of 1991) on 21.12.1995”

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**(v) Kabidi Venku Sah Vs. Syed Abdul Hai and another
[AIR 1984 SC 117]:**

“The attaching creditor can bring the property to sale only subject to the mortgage so long as it is subsisting. That is to say he could bring only the mortgagors equity of redemption to sale if it had not already been extinguished by its sale in execution of any decree obtained on that mortgage.”

9. The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the petitioner under Ext. P5 sale certificate under the Act is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the title and ownership of the petitioner over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the sale is confirmed in favour of the petitioner. The declaration so sought by the petitioner is therefore granted and I further direct the Sub Registrar and the Village Officer to efface the attachments effected subsequent to the mortgage from the relevant records. Otherwise those

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attachments would remain as a permanent taboo prejudicially affecting the marketability and title to the property even though they ceased to have any legal efficacy. The needful in relation to the property bought by the petitioner shall be done within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is allowed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 23RD DAY OF JULY 2018 / 1ST SRAVANA, 1940

WP(C).No. 34956 of 2017

PETITIONERS :

- 1 P.J.BENZIGER,
AGED 65, S/O.JOHN,
POOMANGALATH, MATHILIL P.O.,
KOLLAM-691601.
- 2 JOICE SONY,
AGED 37, W/O.SONY BENZIGER,
POOMANGALATH, MATHILIL P.O.,
KOLLAM-691601.

BY ADV.SRI.SAJU J PANICKER

RESPONDENTS :

1. THE AUTHORIZED OFFICER, UCO BANK,
KOLLAM BRANCH, KHAISE BUILDING,
BEACH ROAD, KOLLAM-691001.
2. THE SUB REGISTRAR,
ERAVIPURAM SUB REGISTRY OFFICE,
ERAVIPURAM, KOLLAM-691001.
3. THE VILLAGE OFFICER,
MUNDAKKAL VILLAGE,
KOLLAM-691001.
4. APPUKUTTAN,
AGE NOT KNOWN, S/O.THAMPY,
AKHIL NIVAS, MUNDAKKAL P.O.,
KONDETH, KOLLAM-691001.
5. SUNDARAM FINANCE,
KRISHNA TOWER, VENDERMUKKU,
THEKKEVILA P.O., KOLLAM-691001.

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6. HUNAISA,
KOCHUVEEDU, VADAKKEVILA CHERRY,
VADAKKEVILA P.O., KOLLAM-691001.

7. SHAFEER,
S/O.ABDUL RAHIM, MUNEER MANZIL,
PALLISERIKKAL MURI, SASTHAMCOTTA,
KUNNATHOOR, KOLLAM-691001.

8. SANTHOSH,
VASANTHA NIVAS, NEAR POST OFFICE,
ERAVIPURAM P.O., KOLLAM-691001.

R1 BY SRI.DEEPAK JOY K., SC, UCO BANK
R2 & R3 BY GOVERNMENT PLEADER SRI.M.R.DHANIL
R8 BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-07-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EL

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE SANCTION LETTER DATED
16.11.2010 ISSUED BY THE 1ST RESPONDENT TO THE 4TH
RESPONDENT.
- EXHIBIT P2 THE TRUE COPY OF THE SALE NOTICE PUBLISHED BY
THE 1ST RESPONDENT BANK.
- EXHIBIT P3 THE TRUE COPY OF THE SALE CERTIFICATE.
- EXHIBIT P4 THE TRUE COPY OF THE ENCUMBRANCE CERTIFICATE
IN RESPECT OF THE PROPERTY PURCHASED IN
AUCTION.
- EXHIBIT P5 THE TRUE COPY OF THE REPRESENTATION DATED 3.7.2018
SUBMITTED BEFORE THE 2ND RESPONDENT

RESPONDENT(S) ' EXHIBITS

NIL

TRUE COPY

P.S. TO JUDGE

EL

24.7.2018

DAMA SESHADRI NAIDU, J.

=====

W.P.(C). No. 34956 of 2017 (T)

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Dated this the 23rd day of July, 2018

JUDGMENT

The petitioner, who has purchased a property in an auction held by the creditor Bank, has now sought these reliefs:

“i To issue a writ of mandamus, order or direction directing the 2nd respondent to remove the adverse entries in the relevant registers, relating to the secured asset which was purchased in auction by the petitioners.

ii To issue a writ of mandamus, order or direction to the 2nd respondent to register Ext.P3 sale certificate.

iii To issue a writ of mandamus, order or direction directing the 2nd respondent to remove the adverse entries in the relevant registers regarding the attachment ordered against the secured asset by the civil courts subsequent to the creation of the mortgage and to direct the 2nd respondent to register Ext.P3 sale certificate in favour of the petitioners.

iv To issue a writ of mandamus, order or direction directing the 3rd respondent to mutate the property in favour of the petitioners after registering the property.”

2. In the light of the decision in *Madhan S. v. Sub Registrar, Kollam* [2014 (1) KLT 406] I dispose of this writ petition applying the same ratio.
3. I also hold that the respondents will register the sale deed subject to other statutory compliances, within one week from the date the sale deed is presented.

Sd/-

**DAMA SESHADRI NAIDU
JUDGE**